



County of Los Angeles
CHIEF ADMINISTRATIVE OFFICE

713 KENNETH HAHN HALL OF ADMINISTRATION • LOS ANGELES, CALIFORNIA 90012
(213) 974-1101

DAVID E. JANSSEN
Chief Administrative Officer

June 19, 2001

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**LICENSE AGREEMENT TO INSTALL, OPERATE AND MAINTAIN A WIRELESS
DIGITAL COMMUNICATIONS NETWORK - FIVE YEAR TERM
METRICOM, INC. - COUNTY RIGHT-OF-WAY
(ALL DISTRICTS) (3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Mayor to sign the attached non-exclusive communication license agreement (License) with Metricom, Inc. (Metricom) for the rights to install and operate a wireless digital radio network within the County's unincorporated public right-of-way for a term of five years.
2. Authorize the Chief Administrative Office (CAO) to implement the project.
3. Find that the agreement is categorically exempt from the California Environmental Quality Act (CEQA).

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of this License will permit Metricom to introduce a broadband based technology throughout the unincorporated areas of Los Angeles and provide a seamless high-speed wireless network system to mobile users who can gain unlimited access to the Internet, corporate Intranets, and other online services, for a flat monthly rate.

- Metricom's technology will offer subscribers within the unincorporated areas of the County and elsewhere, the ability to replicate desktop computer functions outside the confines of an office environment, without the dependency of being hard-wired to a standard telephone modem requiring traditional phone line connections.

Board of Supervisors

GLORIA MOLINA
First District

YVONNE BRATHWAITE BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

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- Installation of Metricom's network, which will have minimal impact on County infrastructure (no trenching or cabling is required), consists of attaching shoebox-sized radio transceivers on streetlight, traffic signal, and/or utility poles (typically five radios installed per square mile).
- The Department of Public Works (DPW), who assisted the CAO throughout the evaluation process to ensure the County's facilities and infrastructure were properly safeguarded, concurs with this recommendation.
- The Chief Information Officer (CIO) will assist in a technical evaluation of how the delivery of Countywide services can be enhanced through the use of Metricom's network and also become the "County caretaker" of 50 free Metricom subscriptions (part of the compensation package).
- Metricom's "spread spectrum" technology should not cause interference with other telecommunication systems, and utilizes a portion of the radio spectrum set aside for low-powered, non-federally licensed systems, similar to devices like garage door openers and baby monitors.
- The County will acquire a potentially valuable annual income stream, while providing the unincorporated communities with a choice to subscribe to a wireless data access provider, even in areas where it might be difficult to receive cable or telephone service.

Additionally, market trend information predicts that the workforce, especially those working outside the traditional office environment, will rely on viable mobile high-speed wireless data applications, as a valuable tool to meet growing professional demands. The County has an opportunity to offer its constituency this new emerging technology, and at the same time, explore innovative applications that can compliment the delivery of Countywide services.

According to the CIO, broadband wireless data transmission, will become a key component of e-government initiatives. With the number of County employees who work in "field" positions, the potential use of this technology will likely grow over time, as it increases productivity and efficiency in the workplace.

Implementation of Strategic Plan Goals

The Countywide Strategic Plan directs that we invest in public infrastructure, in order to strengthen the County's fiscal capacity. The approval of this License supports this strategy by complying with the Strategic Asset Management Principles (Goal 4, Strategy 2, Objective 2).

FISCAL IMPACT/FINANCING

Initial revenue projections provided by Metricom indicate the County could receive between \$150,000 to \$215,000 per annum. This range of value represents estimated compensation based on approximately 10,000 subscribers receiving service (approximately 1 percent of the County's unincorporated population).

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Metricom has spent over 15 years in the research and development of its wireless data access service. Significant improvements in the "delivery data speed" will provide Metricom with the ability to market its product nationwide, after successfully testing its network in San Francisco, Seattle and Washington, D.C. over the last few years. It currently has approved right-of-way agreements with over 150 municipalities throughout Southern/Northern California and is scheduled to be operating its system statewide by year-end.

Metricom has elected to accelerate the marketing of its technology by entering into reseller agreements with a number of telecommunication providers, such as MCI WorldCom, Juno, and others, who will market Metricom's network, along with their own services, as a package.

The basic terms and conditions contained in the License provide Metricom with a five year term, and a five year option to renew. The License shall also provide the County with a number of other noteworthy financial benefits.

- Metricom's payments to the County will be based on a formula of 5 percent of the annual gross revenues it receives from resellers (Metricom will collect approximately \$35/per subscription from the reseller provider) who have customers with billing addresses in the unincorporated areas of Los Angeles.

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- The County will receive an annual fee of \$60 for each County owned streetlight, traffic and/or utility pole utilized for the installation of Metricom's radio transceivers (estimated to be marginal income because the utility companies own most of the streetlight facilities within the County right-of-way). The pole-fee is subject to annual Consumer Price Index adjustments.
- Fifty free subscriptions will be provided to the County for its use during the term of the License, along with \$5,000 (half of the negotiated \$10,000 administrative fee the County will receive) to be allocated for equipment modems (this will be administered by the CIO, as stated earlier).
- The agreement has a "Most Favored Nation" clause under which Metricom agrees that if it negotiates a right-of-way contract with another governmental entity of the same size, which contains financial benefits more favorable than the License, it will match those terms for the County. It should be noted that the negotiated compensation package being offered by Metricom is consistent with what other municipalities throughout California will receive.

Metricom will compensate the County on a quarterly basis and be required to provide the County's Auditor-Controller with a verified report each year and be subject to a County audit, inspection or examination of its gross receipts/accounting records. They will also be required, prior to any installation of its facilities, to obtain permits from DPW, and thereafter, be responsible for the operation, repair and maintenance of the network, at no cost to the County.

ENVIRONMENTAL DOCUMENTATION

This project is categorically exempt from CEQA, as specified in Class 1, Section r, of the revised Environmental Document Reporting Procedures and Guidelines adopted by your Board.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

The impacts associated with the installation of Metricom's facilities should be minimal since it requires no trenching or cabling within the right-of-way. Any activity taking place during the mounting of radio transceivers to utility poles will be coordinated through the DPW permitting process.

The Honorable Board of Supervisors

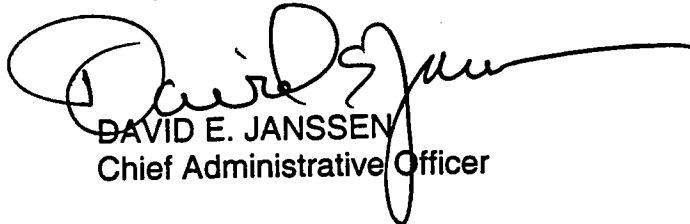
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CONCLUSION

It is requested that the Executive Officer, Board of Supervisors forward one copy of the stamped adopted Board letter, including the executed License to the copy distribution departments indicated below. Also, please return three originals of the executed License and a copy of the stamped adopted Board letter to the CAO, Real Estate Division, 222 South Hill Street, 3rd Floor, Los Angeles, California 90012.

Respectfully submitted,



DAVID E. JANSSEN
Chief Administrative Officer

DEJ:SNY
CWW:CMM:kb

Attachments (5)

c: County Counsel
Auditor-Controller
Chief Information Officer
Department of Public Works

**LICENSE TO ATTACH, INSTALL, OPERATE AND MAINTAIN
A WIRELESS DATA COMMUNICATIONS RADIO NETWORK**

THIS LICENSE to attach, install, operate and maintain a wireless data communications radio network ("License") is dated for reference June 19, 2001, and entered into by and between the COUNTY OF LOS ANGELES, a body corporate and politic ("County") and METRICOM, INC., a Delaware corporation ("Metricom").

RECITALS

WHEREAS, under California law, the County has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of wireless data communications radios in the public right-of-way within the limits of the County; and

WHEREAS, Metricom has entered into a series of reseller agreements with MCI WorldCom, Juno, UUnet, WWC, and other companies to offer Ricochet MCDN service to their customers in markets throughout the Southern California region;

WHEREAS, under the reseller agreements, Metricom's resellers will provide technical support and customer service to their customers of the Ricochet service and Metricom will continue as the owner and operator of the Ricochet network and all related infrastructure;

WHEREAS, in order to provide the Ricochet service, the reseller will supply Metricom with customer information, billing address, modem number, and Metricom in turn will activate the modem and network access for the customer. The end-user customer will have no direct interface with Metricom as operator of the Ricochet network;

WHEREAS, Metricom will have no control over its resellers' pricing, bundling, or marketing of the Ricochet service to their customers;

WHEREAS, Metricom will remain the sole entity obligated under this License and responsible for all performance owing to the County thereunder. In particular, Metricom will remain the party responsible for paying all fees, taxes, and compensation in connection with the exercise of Metricom's rights under this License;

WHEREAS, Metricom's payments to the County will be computed and remitted based upon revenues received by Metricom, whether as a wholesaler or retailer, with respect to the Ricochet services provided directly or indirectly through a reseller to Ricochet customers with billing addresses in the unincorporated areas of Los Angeles County.

WHEREAS, Metricom wishes to attach, install, operate, and maintain a wireless data communications radio network on facilities located in the public right-of-way for purposes of operating its wireless digital communications radio network;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, this License is issued under the following covenants, terms, and conditions:

1. DEFINITIONS.

The following definitions shall apply generally to the provisions of the License:

1.1 AGENCY. "Agency" means any governmental agency or quasi-governmental agency other than the County, including the FCC and the CPUC (as such terms are defined in §§ 1.4 and 1.8 below).

1.2 COUNTY. "County" means the County of Los Angeles.

1.3 EFFECTIVE DATE. "Effective Date" means the date this License is approved by the County of Los Angeles' Board of Supervisors.

1.4 FCC. "FCC" means the Federal Communications Commission.

1.5 FEE. "Fee" means any assessment, license, charge, fee, imposition, tax (but excluding any utility users' tax or franchise fees), or levy of general application to Persons doing business in the County, lawfully imposed by any governmental body.

1.6 LAWS. "Laws" means any and all judicial decisions, statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other Agency having joint or several jurisdiction over the parties to this License, in effect either at the time of execution of this License or at any time during the presence of Radios in the Public Right-of-Way.

1.7. METRICOM. "Metricom" means Metricom, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.8 CPUC. "CPUC" means the California Public Utilities Commission.

1.9 LICENSE. "License" means this license to attach, install, operate, and maintain a wireless data communications radio network within the Public Right-of-Way.

1.10 PERSON. "Person" means an individual, corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, and any other form of business association.

1.11 PROVISION. "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this License that defines or otherwise controls, establishes, or limits the performance required or permitted by either party to this License. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.12 PUBLIC RIGHT-OF-WAY. "Public Right-of-Way" means in, upon, above, along, across, under, and over the public streets, roads, lane, courts, ways, alleys, boulevards, and places, including, without limitation, all public utility easements and public service easements, as the same now or may thereafter exist that are under the jurisdiction of the County. This term shall not include any property owned by any Person or Agency other than the County except as provided by applicable Laws or pursuant to an agreement between the County and any such Person or Agency.

1.13 RADIO MONTH. "Radio Month" means a calendar month during which a Radio occupies space on a County-owned pole even if such occupancy is less than the entire month.

1.14 RADIOS. "Radios" means that radio equipment to be installed and operated by Metricom hereunder as depicted on Exhibit A.

1.15 RICOCHET MCDN. "Ricochet MCDN" means Ricochet Microcellular Data Network, a wireless microcellular data network owned and operated by Metricom.

1.16 SERVICES. "Services" means the wireless data communications services provided through Ricochet MCDN by Metricom.

1.17 INSTALLATION DATE. "Installation Date" means forty-five (45) days after the date of installation of the first Radio on County-owned poles under this License.

1.18 GROSS REVENUES. "Gross Revenues" means the gross dollar amount accrued on Metricom's books with respect to Services provided, either directly by Metricom or indirectly through resellers, to customers with billing addresses in the unincorporated areas of the County of Los Angeles through Metricom's operation of the Ricochet MCDN. Gross Revenues shall be deemed to include such revenues accrued on the books of any affiliate or subsidiary entity to the extent that Metricom transfers the operation of the Ricochet MCDN to such other entity, if such revenues are not otherwise reflected as accrued on Metricom's books. Gross Revenues shall also include the fair market value of any nonmonetary (i.e., barter) transaction between Metricom and any customer/entity with a billing address within the unincorporated areas of the County of Los Angeles; however, it shall exclude (i) local, state, or federal taxes collected by Metricom or a third party that have been billed to the subscribers and separately stated on customer's bills with billing addresses within the unincorporated areas of Los Angeles County and (ii) revenue uncollected from subscribers with billing addresses in the unincorporated areas of Los Angeles County that was previously included in reported Gross Revenues (i.e., bad debts).

2. TERM.

This License shall be for a term of five (5) years, unless it is earlier terminated by either party in accordance with the provisions herein, and shall commence on the "Effective Date". This License shall automatically be renewed for one (1) additional five (5) year term by Metricom on the same terms and conditions as set forth herein (except the Base Annual

Rent and the Annual Pole Fee shall be subject to adjustments as provided in Section 4.3e and Section 4.4), unless Metricom notifies the County of its intention not to renew at least thirty (30) calendar days prior to expiration.

The County unilaterally reserves the right to terminate this License within one (1) year of the Effective Date if Metricom has not completely installed its Radios and Ricochet MCDN network and is not in a position to offer the public subscriber basic service. The County will not be legally or financially responsible for any costs or claims Metricom may incur resulting from exercising this right.

3. SCOPE OF LICENSE.

3.1 Any and all rights expressly granted to Metricom under this License, which shall be exercised at Metricom's sole cost and expense, shall be subject to the prior and continuing right of the County under applicable Laws to use any and all parts of the Public Right-of-Way exclusively or concurrently with any other Person or Persons, and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title which may affect the Public Right-of-Way. Nothing in this License shall be deemed to grant, convey, create, or vest a real property interest in land in Metricom whether perpetual or temporary, including any fee or leasehold interest, easement, or any franchise right.

3.2 The County hereby authorizes Metricom to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on County-owned or County administered streetlight poles, lighting fixtures, electroliers, streetlights, excluding decorative street lighting, within the Public Right-of-Way so long as the placement of Radios is more than fifty (50) feet from an intersection or traffic signal system, and said equipment operates at 120 volt supply, for the purposes of operating its Ricochet MCDN and providing Services to Persons located within or outside the boundaries of the County. Any work performed pursuant to the rights granted under this License shall be subject to the prior review and approval of the County. During the term of this License, Metricom shall advise the County's Department of Public Works (DPW)-Operational Services Division in writing within ten (10) days after the installation, removal, or relocation of one or more Radios of the locations where Radios have been installed, removed, or relocated. Such identification shall be incorporated in Exhibit B to this License.

3.3 The County hereby further authorizes and licenses Metricom to attach, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on streetlight poles, power poles or other property owned by public utility companies or other property owners located within the Public Right-of-Way, on the condition that Metricom first obtain written permission from said public utility company or property owner to locate Radios in or on its property. Metricom shall furnish the County documentation of said permission from the individual utility/property owner responsible prior to the installation of said Radios.

3.4 Except as licensed by applicable laws or this License, in the performance and exercise of its rights and obligations under this License, Metricom shall not interfere in any manner with the existence and operation of any or all public and private rights-of-

way, traffic signal systems, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express written approval of the owner or owners of the affected property or properties.

3.5 Metricom shall comply with all applicable laws in the exercise and performance of its rights and obligations under this License.

3.6 The County reserves the right to modify the service voltage delivered to or at any streetlight pole, utility pole or other property on which a Radio may be located. Metricom shall replace or modify any Radio that will be affected by such voltage modifications within thirty (30) days of receiving notice of voltage modifications. In the event that Metricom fails to replace or modify any Radio within the thirty-day (30-day) notice period before the voltage modifications, the County may remove or disconnect any such Radio until Metricom performs and completes the necessary work and advises the County accordingly. Metricom shall reimburse the County for the actual cost to remove or disconnect, any Radio. Said reimbursement shall be made no later than thirty (30) days after receipt of an invoice submitted by County.

4. FEES, TAXES AND MOST-FAVORED NATION CLAUSE.

4.1 Metricom shall be solely responsible for the payment of all lawful Fees in connection with the exercise of Metricom's rights under this License.

4.2 Metricom agrees to pay any application, administrative and processing fees required in connection with this License. These fees may be charged at the then current applicable rate for any such actions. The fee for the processing of this License shall be Ten Thousand Dollars (\$10,000.00). Said fee shall be due and payable upon Metricom's delivery of a signed License to County.

4.3 Metricom shall pay during the term of the License, including the year of granting the License, to the County of Los Angeles, in lawful money of the United States, annual fees computed as follows:

4.3a Five percent (5%) of the Gross Revenues generated by Metricom's operation in the unincorporated area of the County ("Base Annual Rent"); and

4.3b An annual fee ("Annual Pole Fee") in the amount of Sixty Dollars (\$60.00) for the use of each County-owned pole upon which a Radio has been installed pursuant to this License. Said Annual Pole Fee does not include the cost of utility service which shall be provided by Metricom.

4.3c The initial Annual Pole Fee shall be due and payable not later than the Installation Date and shall equal the total number of Radios Metricom then estimates it will install on County-owned poles during the succeeding twelve (12) months multiplied by the Annual Pole Fee. The Annual Pole Fee for subsequent years shall be due and payable

not later than thirty (30) days following January 1st of each and every year of the term hereof and shall equal the total number of Radios then installed on County-owned poles pursuant to this License multiplied by the Annual Pole Fee, adjusted, as described immediately below ("Prior Year Adjustment"). The Prior Year Adjustment shall either increase or decrease a subsequent year's Annual Pole Fee to account for the installation or removal of Radios during the prior year, and shall equal the difference between (i) the number of Radios used to calculate the prior year's Annual Pole Fee multiplied by twelve (12), and (ii) the actual number of Radio Month's which occurred during such year, multiplied by one-twelfth (1/12) of the Annual Pole Fee.

4.3d Annual Pole Fee payments shall be made in advance on January 1st of each and every year or fractional year of the term hereof, except the fractional year immediately subsequent to the Effective Date when the Annual Pole Fee shall be made no later than the Installation Date pursuant to Paragraph 4.3c, and shall be made by check or draft issued and payable to the County's Auditor-Controller.

4.3e The County reserves the right to change its Base Annual Rent at five-year (5-year) intervals from the effective date of this License, after a hearing by the Chief Administrative Office determines good cause is found and such action is not in conflict with the laws of the State of California.

4.3f As additional consideration for the County's execution and delivery of this License, the County shall have the right throughout the term of this License to receive up to the maximum number of fifty (50) free Ricochet Internet access subscriptions. These subscriptions will allow for Internet access, e-mail and news. LAN access, dial-in Internet access, and other services will not be provided by Metricom but may be obtained through an authorized Ricochet service provider, at the County's expense.

The County shall designate one person within the County's Chief Information Office, who shall be responsible for ordering and receiving any subscriptions. To take advantage of this program, the designated individual should contact Metricom's local office (typically the Local Market Manager). The County's right to use the subscriptions shall commence at the time that Ricochet service is commercially available in the County and shall extend until the expiration of the term of this License or through the length of time that Radios are deployed in the County's Public Right-of-Way, whichever is shorter. The County's use of the subscriptions shall be subject to the standard terms and conditions of the chosen retailer with whom the County obtains its fifty (50) free subscriptions. The County understands and agrees that modems and equipment required to utilize the subscriptions and any additional service subscriptions or service options the County may desire, will need to be obtained from an authorized retailer at market rates current from time to time. The County shall use all subscriptions provided pursuant to this section solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of same by any other person, excepting a local public entity that provides public service within the corporate boundaries of the County, (e.g., public safety or fire departments, etc.).

4.4 Commencing with the second (2nd) anniversary of the Effective Date of the License term, and for each successive one (1) year period therefrom, the Annual Pole Fee amount set forth in Paragraph 4.3b shall be subject to adjustment. The Annual Pole Fee shall be adjusted in accordance with the formula set forth in Paragraph 4.4a. The "Base Index" shall be the index published in the month immediately preceding the month in which the Effective Date commences.

4.4a The method for computing the adjustment shall be by reference to the Consumer Price Index for all Urban Consumers for the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area, all items published by the United States Department of Labor, Bureau of Labor Statistics, Base 1982-1984, hereinafter referred to as "Index".

The adjustment shall be calculated by multiplying the base (\$60.00 per annum for each County-owned pole upon which a Radio has been installed), by a fraction, the numerator being the New Index which is the Index published in the month immediately preceding the month the adjustment is to be effective, and the denominator being the Base Index which is the Index published the month immediately preceding the month in which the License commenced. The formula shall be as follows:

$$\frac{\text{New Index}}{\text{Base Index}} \times \$60.00 = \text{Adjusted Annual Pole Fee}$$

If the Index is changed so that the base year of the Index differs from that used at the Effective Date of this License, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the term of this License, such other governmental Index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.

4.5 Metricom, during the term of the License, shall make Base Annual Rent payments, on a quarterly calendar basis, to the County's Auditor-Controller, as provided in Paragraphs 4.3, 4.3a and 4.3b supra, within thirty (30) days after the due date. In the event Metricom fails to make any payments for the License on or before the dates due as hereinabove provide, Metricom shall pay a late charge of ten percent (10%) of the amount due, said ten percent (10%) being due commencing on the thirty-first (31st) day after the due date. The ten percent (10%) per delinquent month has been set by both parties hereto in recognition of the difficulty in affixing actual damages from a breach of said time and performance requirements.

4.5a Base Annual Rent and Annual Pole Fee payments shall be made by check or draft issued and payable to the County of Los Angeles, and mailed or otherwise delivered to:

**County of Los Angeles
Auditor-Controller, Administrative Services
500 West Temple Street, Room 514
Los Angeles, CA 90012
Attention: Franchise/Concessions Section**

Please include the County assigned license number, site name and address on the payment check or draft for identification purposes.

4.6 In the event full payment of any rate, payment or fee, including the ten percent (10%) late charge, is not received within sixty (60) days after the due date, interest shall accrue on the unpaid balance at two percent (2%) per month.

4.7 Metricom shall during the term of the License:

4.7a File with the County Auditor-Controller and the Chief Administrative Office within sixty (60) days after the expiration of each calendar year, or fractional calendar year, following the date of the granting of the License, one (1) copy each of a report verified under oath of Metricom or by the oath of a duly authorized representative of Metricom, setting forth in detail the computation of the amount of the Base Annual Rent and Annual Pole Fee due for the immediately preceding calendar year, (or the pro rata amount thereof for the fractional calendar year following the granting of the License). Metricom shall at all times maintain a full, true, and correct accounting of its Gross Revenues, which accounting, and all books, records and correspondence and documents of Metricom in connection with this License and/or Gross Revenues shall at all times during the course of this License and for three (3) years after its expiration or termination be open for audit, inspection and examination by the County.

If any audit connected in such a manner shall reveal a deficiency of payments under this Paragraph 4, Metricom shall immediately upon notice pay the deficiency, together with an interest rate as described in Paragraphs 4. and 4.6 to the County.

4.7b File with the designated contact within the Chief Administrative Office's Real Estate Division and the Director of the Los Angeles County Department of Public Works, within sixty (60) days after the end of the calendar year, a report, in duplicate, showing the permit number of each permit obtained for the installation of Radios during the immediately preceding License report period.

4.8 Should Metricom, after the parties' execution and delivery of this License, enter into a license agreement or franchise with another municipality of the same size or smaller than the County in the Los Angeles-Riverside-Orange County Consolidated Metropolitan Statistical Area which agreement contains financial benefits for such

municipality which, taken as a whole and balanced with the other terms of such license or agreement, are, in the County's opinion, substantially superior to those in this License, shall have the right to require that Metricom modify this License to incorporate the same or substantially similar superior benefits and such other terms. Metricom shall provide a list of relevant municipal franchise/license agreements once a year to the County to ensure this provision is being monitored.

4.9 Metricom acknowledges that notice is hereby given to Metricom pursuant to California Revenue and Taxation Code § 107.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied on such interest. Metricom shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Metricom's right to possession, occupancy, or use of any public property pursuant to any right of possession, occupancy, or use created by this License.

5. UTILITY SERVICE

Metricom shall promptly pay all utility charges in connection with the exercise of Metricom's rights under this License, and additionally, to be responsible for, and promptly pay, all such charges inadvertently or mistakenly billed to the County. Metricom covenants and agrees that in no event will the County incur or be liable for any costs for electrical consumption of the Radios installed on County-owned poles pursuant to this License. Metricom agrees to contract directly with the applicable public utility company for the provisions of the Radios' electricity. Metricom agrees to defend, indemnify and hold the County harmless with respect to any electrical charges or electrical rate increase the County may incur, in connection with, or because of, Metricom's attachment of Radios to County-owned poles pursuant to this License. Metricom agrees to enter into agreements with appropriate electricity providers and/or have rate tariffs approved which incorporate the concept that Metricom is to be separately billed for electrical consumption for the Radios installed on County-owned poles.

6. REMOVAL AND RELOCATION OF RADIOS

6.1 Metricom shall relocate a Radio at Metricom's sole cost and expense upon fifteen (15) business days prior written notice in situations described in subsection (a) below, and immediately in situations described in subsections (b) and (c) below at Metricom's sole cost and expense, whenever County reasonably determines that the relocation is needed: (a) to facilitate or accommodate the construction, completion, repair, relocation or maintenance of a County project, (b) because the Radio is interfering with or adversely affecting proper operation of County light poles, traffic signals or other County facilities, or (c) to protect or preserve the public health, safety, or welfare. If Metricom shall fail to relocate any Radios as requested by the County in accordance with the foregoing sentence, the County shall be entitled to relocate the Radios at Metricom's sole cost and

expense. Metricom shall reimburse the County for the actual cost to remove, disconnect, relocate or repair any Radio. Said reimbursement shall be made no later than thirty (30) days after receipt of an invoice submitted by the County.

6.2 In the event Metricom desires to relocate any Radios from one County-owned or County-administered pole to another County-owned or County-administered pole, Metricom shall so advise DPW Construction Division-Permits Section. County will use reasonable efforts to accommodate Metricom by making another functionally equivalent County-owned or County-administered pole available for use in accordance with and subject to the terms and conditions of this License.

6.3 In the event that any Radio subject to this License is abandoned/or no longer in service for a period of six (6) months or more, Metricom promptly shall notify the County, and the County, at its option, may promptly remove the non-operating Radio(s) at Metricom's sole cost and expense or dedicate the same to the County. The County shall not remove or require dedication of any Radios, unless and until the County first gives fifteen (15) days prior written notice to Metricom to remove the Radios. If Metricom shall fail to remove the Radios as required by the County, the County shall be entitled to remove the Radios at Metricom's sole cost and expense. At County's request, Metricom shall execute such documents of title as will convey all right, title, and interest in the abandoned Radios, but in no other Metricom property, intellectual or otherwise, to the County. In the event the County elects to remove or relocate Radios, Metricom shall reimburse the County for the actual cost to remove or disconnect any Radios. Said reimbursement shall be made no later than thirty (30) days after receipt of an invoice submitted by the County.

6.4 Whenever the removal or relocation of Radios is required under this License, and such removal or relocation shall cause the Public Right-of-Way to be damaged, Metricom, at its sole cost and expense, promptly shall repair and return the Public Right-of-Way, to its original condition in which the Radios are located in accordance with applicable laws. If Metricom does not repair the site as just described, then the County shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Metricom and charge Metricom for the proposed costs to be incurred, or the actual costs incurred by the County, at the County's standard rates. Upon the receipt of a demand for payment by the County, Metricom shall reimburse the County for such costs. Metricom shall reimburse the County for the actual cost to repair the Public Right-of-Way. Said reimbursement shall be made no later than thirty (30) days after receipt of an invoice submitted by the County.

7. CONSTRUCTION PERMITS

7.1 In the event that the attachment, installation, operation, or maintenance of Radios shall require any construction work in the Public Right-of-Way, Metricom shall apply for the appropriate street opening and other permits required by law.

7.2 Upon the completion of construction work, Metricom promptly shall furnish to the County's DPW Permits Section, as previously referenced in paragraph 6-2, in hard copy and Metricom's electronic format, suitable documentation showing the exact location of the Radios in the Public Right-of-Way.

8. INDEMNIFICATION AND WAIVER

8.1 Metricom shall indemnify, defend and hold harmless, the County, and its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with Metricom's acts and/or omissions arising from and/or relating to this License.

8.2 The waiver by the County of any breach or violation of any Provision of this License by Metricom shall not be deemed to be a waiver or a continuing waiver by the County of any subsequent breach or violation of the same or any other Provision of this License by Metricom.

8.3 Metricom waives any and all claims, demands, causes of action, and rights it may assert against the County on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by, among others, an Act of God, an event or occurrence which is beyond the reasonable control of the County, a power outage, a lightning strike, or occasioned by the installation, maintenance, replacement or relocation of any County-owned or County-administered facility to which such Radio is attached.

8.4 The County shall be liable only for the cost of repair to damaged Radios arising from the gross negligence or willful misconduct of the County or its employees or agents, and the County shall not be responsible for any damages, losses, or liability of any kind (including consequential damages), occurring by reason of anything done or omitted to be done by the County or by any third party, including, without limitation, damages, losses, or liability arising from the issuance or approval by the County of a license to any third party or any interruption in Services.

9. INSURANCE

9.1 General Insurance Requirements: Without limiting Metricom's indemnification of County and during the term of this License, Metricom shall provide and maintain, and shall require all of its subcontractors to maintain the following programs of insurance specified in this License. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County, and such coverage shall be provided and maintained at Metricom's own expense.

- A. Evidence of Insurance:** Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to: County of Los Angeles, Chief Administrative Office, Real Estate Division, 222 South Hill Street, 3rd Floor, Los Angeles, CA 90012, Attention: Carlos Brea, prior to commencing services under this License. Such certificates or other evidence shall:
- (1) Specifically identify this License.
 - (2) Clearly evidence all coverages required in this License.
 - (3) Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
 - (4) Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this License.
 - (5) Identify any deductibles or self-insured retentions as they apply to the County, or require Metricom to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- B. Insurer Financial Ratings:** Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII, unless otherwise approved by the County.
- C. Failure to Maintain Coverage:** Failure by Metricom to maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the contract upon which the County may immediately terminate or suspend this License. The County, at its sole option, may obtain damages from Metricom resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and without further notice to Metricom, the County may demand reimbursement of sums from Metricom for any premium costs advanced by County for such insurance.
- D. Notification of Incidents, Claims or Suits:** Metricom shall report to the County:
- (1) Any accident or incident relating to services performed under this License which involves injury or property damage which may result in the filing of a claim or lawsuit against Metricom and/or the County. Such report shall be made in writing within twenty-four (24) hours of occurrence.

- (2) Any third party claim or lawsuit filed against Metricom arising from or related to services performed by Metricom under this License.
- (3) Any injury to a contractor employee which occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County contact referenced in Paragraph 9.1A.
- (4) Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or securities entrusted to Metricom under the terms of this License.

E. **Compensation for County Costs:** In the event that Metricom fails to comply with any of the indemnification or insurance requirements of this License, and such failure to comply results in any costs to the County, Metricom shall pay full compensation for all costs incurred by the County.

F. **Insurance Coverage Requirements for Subcontractors:** Metricom shall ensure any and all sub-contractors performing services under this License meet the insurance requirements of this License by either.

- (1) Metricom providing evidence of insurance covering the activities of sub-contractors, or
- (2) Metricom providing evidence submitted by sub-contractors evidencing that subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of sub-contractor insurance coverage at any time.

9.2 **Insurance Coverage Requirements:** Metricom shall obtain and maintain at all times during the term of this License the following types of insurance coverage with the appropriate coverage amounts:

A. General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

| | |
|------------------------------------------|-------------|
| General Aggregate: | \$2 million |
| Products/Completed Operations Aggregate: | \$1 million |
| Personal and Advertising Injury: | \$1 million |
| Each Occurrence: | \$1 million |

B. Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

C. Workers Compensation and Employers' Liability insurance providing workers compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which Metricom is

responsible. If Metricom's employees will be engaged in maritime employment, coverage shall provide workers compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which Metricom is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

| | |
|--------------------------|-------------|
| Each Accident: | \$1 million |
| Disease - policy limit: | \$1 million |
| Disease - each employee: | \$1 million |

- D. Professional Liability: Insurance covering liability arising from any error, omission, negligent or wrongful act of Metricom, its officers or employees with limits of not less than \$1 million per occurrence and \$3 million aggregate. The coverage also shall provide an extended two year reporting period commencing upon termination or cancellation of this License.

10. NOTICES

All notices which shall or may be given pursuant to this License shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery service; or (iii) by facsimile transmission, if a hard copy of the same is following by delivery through the U.S. mail or by overnight delivery service as just described, as follows:

County County of Los Angeles
Real Estate Division
222 South Hill Street, 3rd Floor
Los Angeles, CA 90012
Attention: Manager, Property Management

with a copy to

Section Head
Permits and Subdivisions Section
Construction Division
Department of Public Works
900 South Fremont Avenue
Alhambra, CA 91803

Metricom Metricom, Inc.
333 West Julian Street
San Jose, CA 95110
Attention: Network Real Estate

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party in the manner set forth above.

11. TERMINATION

11.1 This License may be terminated by either party upon thirty (30) days prior written notice to the other party upon a default or any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days and fails to thereafter diligently prosecute such cure to completion), provided that the grace period for any monetary default is ten (10) days from receipt of notice.

11.2 Notwithstanding Paragraph 11.1, Metricom may terminate this License at any time by providing the County with ninety (90) days prior written notice of its intent to terminate this License. Should Metricom exercise its right to terminate this License, then Metricom shall remove all its Radios within sixty (60) days of the termination at its sole cost and expense, and restore and return to Public Right-of-Way to its original condition. If Metricom shall fail to remove its Radios in accordance with the foregoing sentence, the County shall be entitled to remove the Radios at Metricom's sole cost and expense. Metricom shall reimburse the County for the actual cost to disconnect and remove any Radio and restore or repair the Public Right-of-Way to its original condition. Said reimbursement shall be made no later than thirty (30) days after receipt of an invoice submitted by the County.

12. MISCELLANEOUS PROVISIONS

12.1 This License shall not be assigned by Metricom without the express written consent of the County, which consent shall not be unreasonably withheld or delayed. Any attempted assignment in violation of this Paragraph shall be void. The transfer of the rights and obligations of Metricom to a currently existing parent, subsidiary, or other affiliate of Metricom, shall not be deemed an assignment, provided that Metricom reasonably demonstrates to the County that (i) such transferee will have a financial strength after the proposed transfer at least equal or greater to Metricom's financial strength at the end of calendar year 2000; (ii) any such transferee assumes all of Metricom's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with Metricom's management team, in the provision of telecommunications or similar services evidences an ability to operate Ricochet MCDN and provide services.

Metricom shall give the County thirty (30) days prior written notice of any such transfer. The County shall have ninety (90) days from the date that Metricom provides all of the information required to meet the burden of proof required by this Paragraph to approve any such assignment of this License. Should there be no response within ninety (90) days, the request shall be deemed approved.

12.2 The County understands that Metricom will be operating in the 902 to 928 MHZ band of the radio spectrum for which no license from the FCC is required. The County also understands that subsequent to the commencement of this License Metricom may operate in one or more portions of the frequency spectrum which will require a license(s) from the FCC to operate. Metricom shall comply with all applicable City and County ordinances and all State and Federal laws, and in the course thereof; obtain and keep in effect all permits and licenses required to conduct the permitted activities in the Public Right-of-Way.

12.3 Metricom shall conduct the permitted activities in a courteous and professional manner, operate without interfering with the use of the facilities by the County or the public utilities except as herein permitted, and remove any agent, servant or employee who fails to conduct permitted activities in the manner heretofore described.

12.4 Metricom understands that this License does not provide Metricom with exclusive use of any County-owned poles and that the County shall have the right to license other providers of telecommunications services to install equipment or devices in the Public Right-of-Way. However, the County agrees to promptly notify Metricom within sixty (60) days of the receipt of a proposal for the installation of communications equipment or devices in the Public Right-of-Way, irrespective of whether a license is required by the FCC for the operation thereof. In addition, the County agrees to advise such other providers of telecommunications services of the presence or planned deployment of the Radios in the Public Right-of-Way.

12.5 This License contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between or among the parties relating to the subject matter of this License which are not fully expressed herein.

12.6 This License may not be amended except pursuant to a written instrument signed by both parties.

12.7 If any one or more of the Provisions of this License shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provisions of this License and shall in no way affect the validity of the remaining portions of this License.

12.8 Metricom shall be available to the staff employees of any County department having jurisdiction over Metricom's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation,

operation, maintenance, or removal of the Radios. The County may contact by telephone the network control center operator at telephone number (800) 556-6123 regarding such problems or complaints.

12.9 This License shall be governed and construed by and in accordance with the laws of the State of California. In the event that suit is brought by a party to this License, the parties agree that trial of such action shall be vested exclusively in the state courts of California, County of Los Angeles, or in the United States District Court, Central District of California, in the County of Los Angeles.

12.10 All exhibits referred to in this License and any addenda, attachments, and schedules which may, from time to time, be referred to in any duly executed amendment to this License are by such reference incorporated in this License and shall be deemed a part of this License.

12.11 This License is binding upon the successors and assigns of the parties hereto.

12.12 Metricom acknowledges that the County may develop rules, regulations, and specifications for the attachment, installation, and removal of Radios and any similar purpose radios on the County-owned facilities, including poles, and such rules, regulations, and specifications, and when finalized, shall govern Metricom's activities hereunder as if they were in effect at the time this License was executed by the County; provided, however, that in no event shall such rules, regulations or specifications materially interfere with or affect Metricom's right to install Radios, or Metricom's ability to transmit or receive radio signals from Radios installed, pursuant to and in accordance with this License.

12.13 To the extent the County has actual knowledge thereof, the County will attempt to inform Metricom of the displacement of any pole on which any Radio is located.

12.14 In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this License, such party shall not unreasonably delay or withhold its approval or consent.

12.15 The County shall not be liable in any manner, for any failure, interruption or disturbance in utility service to any Radio(s).

12.16 Metricom and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by Licensee, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of the Licensee or any County lobbyist or County lobbying firm retained by Licensee to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this License upon which the County may immediately terminate or suspend this License.

Metricom shall immediately report any attempt by a County office, employee or agent to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861. Failure to report such solicitation may result in the proposer's submission being eliminated from consideration.

In the event Metricom offers governmental rates, the County shall be entitled to purchase an unlimited number of subscriptions for Metricom's Ricochet subscriber basic service, including Internet access and e-mail account, at a monthly rate equal to Metricom's lowest rate applicable to any government entity, municipality or County in Southern California. In addition, County shall be entitled to Metricom's lowest rate applicable to any government entity, municipality or County for the purchase of Ricochet modems from Metricom for the purpose of accessing Metricom's Ricochet services.

/ /

IN WITNESS WHEREOF, Metricom has executed this License or caused it to be duly executed, and the County of Los Angeles by order of its Board of Supervisors, has caused this License to be executed on its behalf by the Mayor of said Board and attested by the Executive Officer, Clerk of the Board thereof the day, month, and year first above written.

ROW Legal Department ^{may}

By: Allen P. Donnelly

Date: 5-24-01

METRICOM, INC.

By: Dale Marquart

Its: Dale W. Marquart, Esq.
General Counsel &
Senior VP Administration

ATTEST:

Violet Varona-Lukens
Executive Officer
Board of Supervisors

COUNTY

COUNTY OF LOS ANGELES

By: _____
Deputy

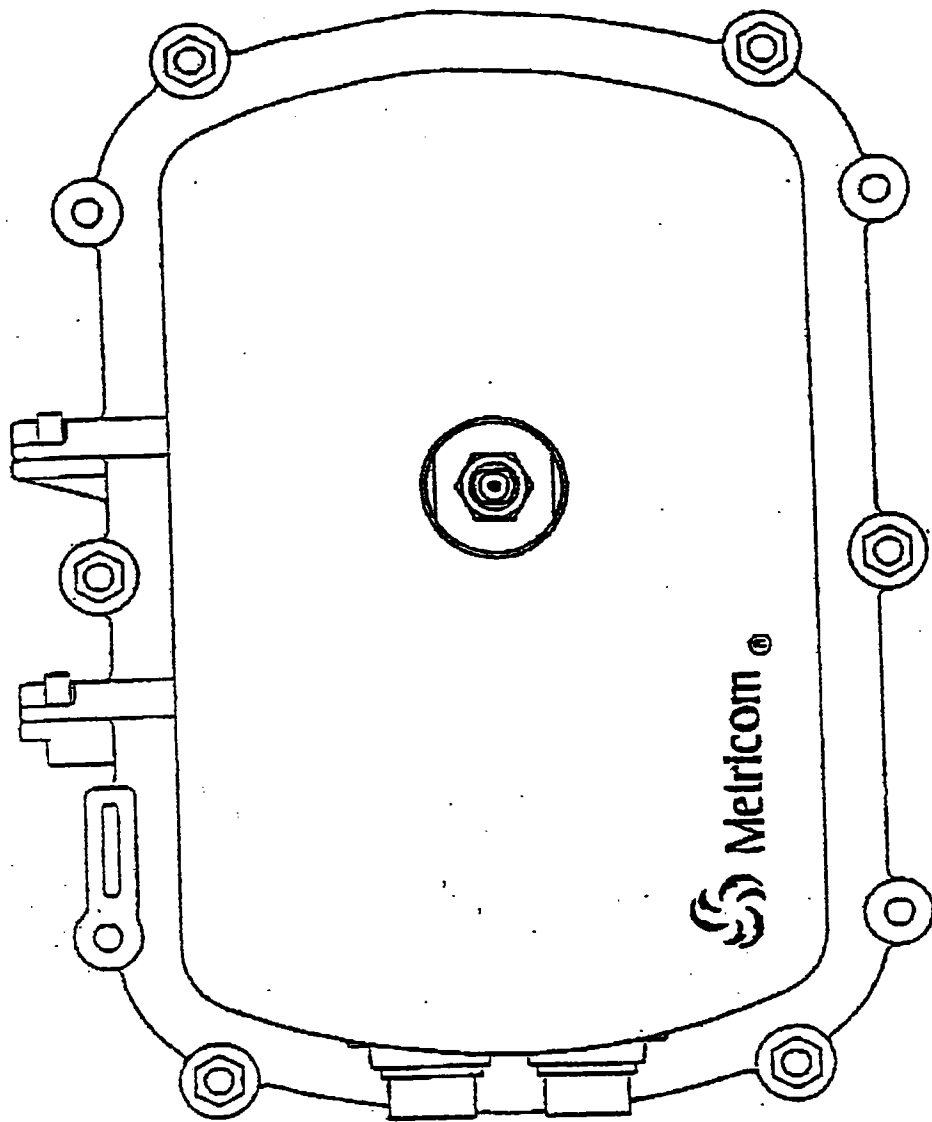
By: _____
Mayor, Los Angeles County

APPROVED AS TO FORM:

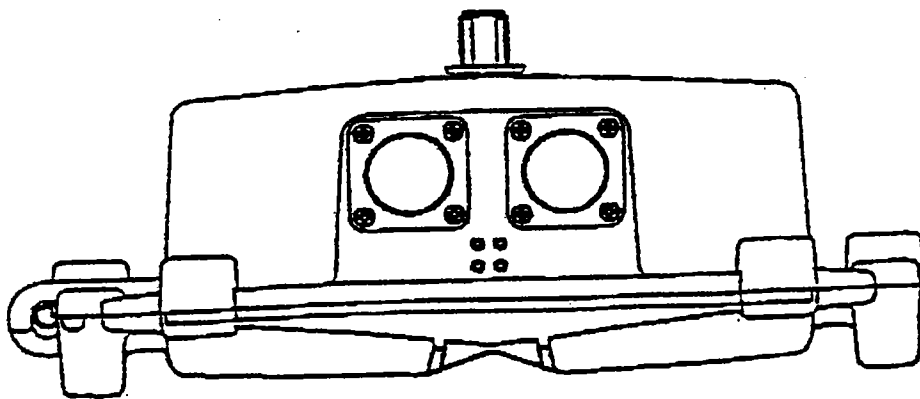
LLOYD W. PELLMAN
County Counsel

By: Francis E. Scott
Francis E. Scott
Principal Deputy, County Counsel

CM:kb



TOP VIEW



END VIEW

EXHIBIT " A -1

Poletop Radio
Mounting

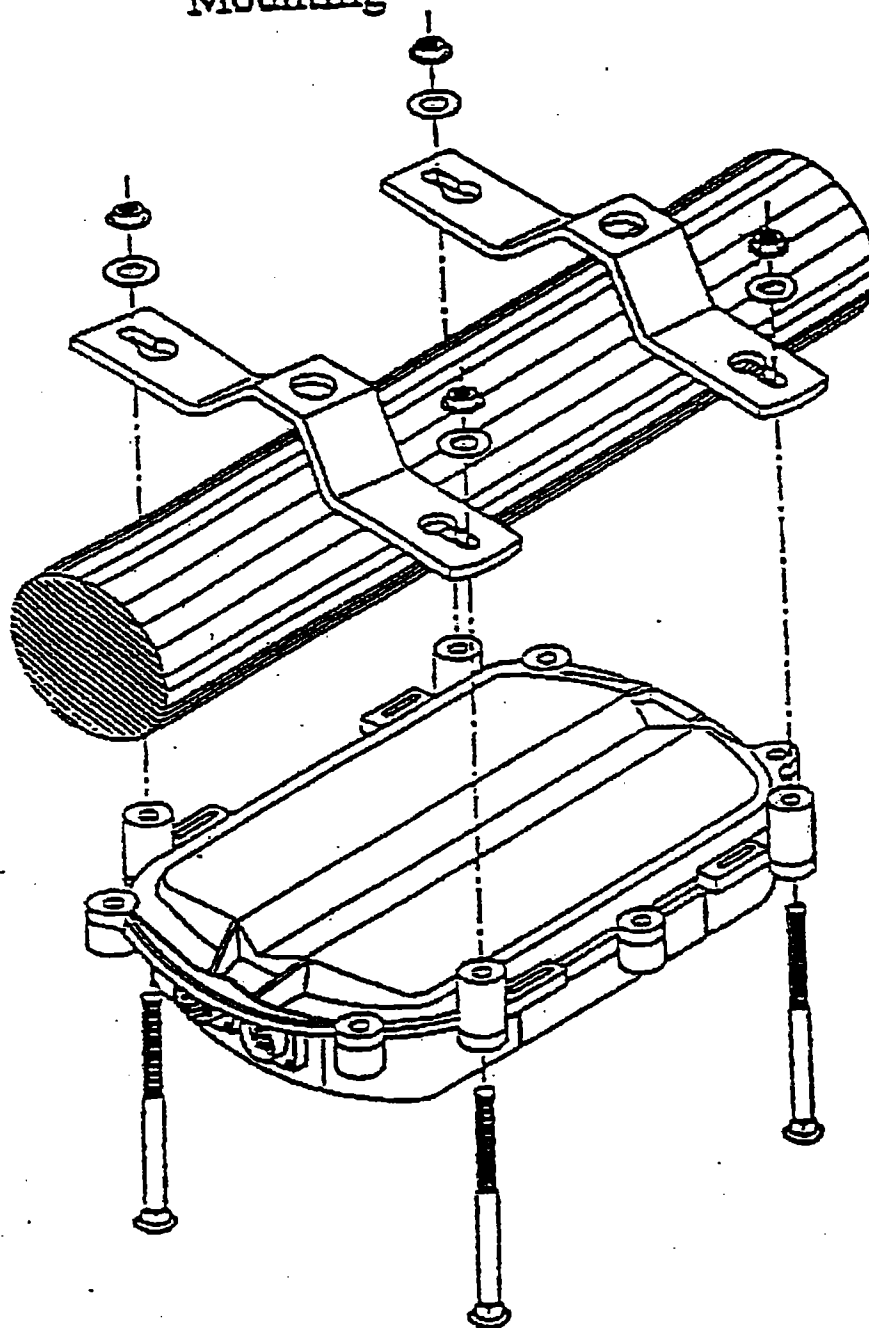


EXHIBIT "A -2

EXHIBIT "B"

RADIO LOCATIONS

**PROPOSED LOCATIONS TO BE PROVIDED
AFTER REVIEW OF STREET LIGHT MAPS
AND PRIOR TO DEPLOYMENT**